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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/655,598	09/05/2000	Paul Bobrowski	PB2	8119

545 7590 03/28/2003

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EXAMINER	
PRATT, HELEN F	

ART UNIT	PAPER NUMBER
1761	13

DATE MAILED: 03/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/655,598	Applicant(s) BOBROWSKI ET AL.
	Examin r Helen F. Pratt	Art Unit 1761

-- The MAILING DATE of this communication appears on the cov r sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 March 2003* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *6-8,27-35* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *6-8 and 27-35* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Information Disclosure Statement

The listing of references by "incorporation of essential material" in the specification is still considered to be improper as is the IDS of 9-5-00. See last office action.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted state of the art.

The claims are rejected for the reasons of record stated in the last office action.

Claims 27-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Quiros et al. in view of Mitzoguchi et al. and Titcomb et al.

Quiros et al. disclose that it is known to make bread and cookies from maca flour (page 184, 2nd para.). Drying the maca and grinding to make a flour is obvious in that maca flour is known and drying and grinding is the known way of making a flour (supra). Claims 27 and 28 differ from the reference in the step of combining the maca flour with a grain flour used to make a bread and in the addition of egg whites to the composition. However, Mizoguchi et al. disclose that it is known to use various grain flours to make bread, (also, claim 32) (col. 2, lines 35-45). Titcomb et al. disclose that it is known to

use egg white solids in making bread (col. 3, lines 19-40). In re Levin also applies as cited in previous office actions. Official Notice is taken that kneading dough to develop gluten is well known, and is generally done by hand, or can be mixed in a mixer and cooking the dough is well known as is allowing the dough to rise (col. 2, lines 59-70 (Titcomb et al.)). Therefore, it would have been obvious to use known ingredients in the process of Quiros to make a bread.

Nothing new is seen as in claim 29 of making pasta, from dough, which is an age-old process. See In re Levin, supra. Therefore, it would have been obvious to use known processes to make pasta.

Flours are generally ground as in claim 30, as in grinding wheat flour in flour mills and nothing new is seen in this. The fact that a flour is made connotates that it has been ground. Therefore, it would have been obvious to grind the maca to make a flour.

Claim 31 further requires adding powdered gluten to the maca and grain flour. Titcomb discloses the addition of wheat flour to a high protein bread (col. 3, lines 20-25). Therefore, it would have been obvious to add gluten for its known function of adding structure to a mixture.

Claim 33 further requires that the particle size be about like that of all-purpose flour. Grinding to a particular particle size is seen as being within the skill of the ordinary worker. Therefore, it would have been obvious to grind to whatever size was required.

Some of the limitations of claim 34 have been discussed above and are obvious for those reasons. Quiros discloses as above that the maca flour can be used to make

cookies (page 184, 2nd para.). The use of sugar, fat and baking powder are conventional ingredients in making cookies. Therefore, it would have been obvious to make a product using conventional ingredients.

ARGUMENTS

Applicant's arguments with respect to claims 6-8, 27-35 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 703-308-1978. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on (703) 308-3959. The fax phone number for the organization where this application or proceeding is assigned is 703-305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

Hp 3-21-03

H. Pratt

HELEN PRATT
PRIMARY EXAMINER